SINGAPORE REPORTS

K.G. CHEMIE-EXPORT W. RUTER G.M.b.H. & CO. v. EASTERN ENTERPRISES (PTE) LTD.

[A.C.J. (Winslow J.) October 31, 1972]
[Singapore — Appeal in Suit No. 1545 of 1972]

Bill of Exchange — Acceptance — Whether qualified — Bill of Exchange Act (Cap. 28), ss. 17 & 19(3).

This was an appeal to the High Court against the decision of the registrar granting leave to defend to the defendants on an application by the plaintiffs for liberty to enter final judgment in the sum of $27,703.59 being the amount of a bill of exchange dated November 5, 1971 drawn by the plaintiffs at Hamburg upon the defendants payable to the plaintiffs 90 days after sight which the defendants duly accepted on December 17, 1971. When presented for payment on March 16, 1972 it was dishonoured.

There was no dispute that the bill was accepted within the meaning of section 17 of the Bill of Exchange Act. The only question was whether such acceptance was qualified within the meaning of section 19(3).

Held: the acceptance at the bill of exchange in question was a clear acceptance which was unqualified in clear and unequivocal terms and therefore the plaintiffs had an unassailable case against the defendants on the bill of exchange.

Case referred to:-

(1) *Meyer & Co.* v. *Decorix, Verley Et. Cie* [1891] A.C. 520.

APPEAL FROM REGISTRAR.

Chan Sek Keong for the appellants.

G. Murugaiyan for the respondents.

Winslow J.: This was an appeal to the High Court against the decision of the registrar granting leave to defend to the defendants on an application by the plaintiffs for liberty to enter final judgment in the sum of $27,703.59, being the amount of a bill of exchange dated 5th November, 1971 drawn by the plaintiffs at Hamburg upon the defendants payable to the plaintiffs 90 days after sight which the defendants duly accepted on 17th December, 1971. When presented for payment at the Bank of America National Trust and Savings Association on 16th March, 1972, it was dishonoured.

The sole issue was whether such acceptance was qualified or not. The bill itself is set out at Ex. A5 to the affidavit of 22nd August 1972 filed on behalf of the plaintiffs by Mr. Chan Sek Keong, advocate and solicitor,

"plus 9% interest p.a. from date hereof until approx. date of arrival of remittance

MATURITY 16 MAR. 1972

Hamburg, November 5th 1971 For DM.28,500.00. At 90 days' sight pay against this FIRST Bill of Exchange (Second unpaid) to the order of ourselves the sum of DM. twenty-eight thousand five hundred value received which place to account as advised by

K-G. Chemie-Export
W. Ruter G.M.b.H. & Co.

To The Eastern Enterprises Pte. Ltd.,
88-A High Street,
Singapore 6."

There was no dispute that the bill was accepted within the meaning of section 17 of the Bill of Exchange Act (Cap. 28). The only question was whether such acceptance was qualified within the meaning of section 19(3). So far as it is material, this sub-section reads: —

"In particular an acceptance is qualified which is —
(a) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated;"

In this respect, reliance was placed by the defendants on a letter dated 17th December, 1971 addressed to the Bank of America in Singapore by the managing director of the defendants, copied to the plaintiffs, as follows: —

"Re: Your IC 71/04768 for DM.28.500/-
Drawers: M/s. K-G Chemie-Export
W. Ruter GMBH & Co. Humburg

The draft for the above bill has today been presented to us, which we had accepted and wish to advise you that these goods will be lying with us on consignment basis for an on account of the drawers who have already been advised by us in our earlier correspondence dated 5th November, 1971 (our letter No. 24/202)."

This letter is at Ex. G to the affidavit of the managing director of the defendants dated 1st September 1972.

It is clear from the decision of the House of Lords in *Meyer & Co.* v. *Decroix, Verley Et. Cie*(1) that, as Lord Halsbury L.C. held,

"... if a person writes across a bill that which unqualified would, in ordinary course, import a clean acceptance of a bill, and intends to qualify its operation, he must do so by plain and intelligible language, and make that qualification sufficiently part of the acceptance itself to be intelligible in the ordinary course of business."

Lord Watson at page 525 said: —
"... the words of qualification must, in my opinion, be incorporated in the acceptance, or at least so connected with the acceptance as obviously to form part of it; and must also be such as to indicate clearly and unequivocably the nature of the restriction which they are meant to introduce."

Lord Herschell at page 527 went even further when he said,

"I think further that it is beyond dispute that if an acceptor seeks to qualify his acceptance, and thus to modify the obligations which an acceptance ordinarily imposes, he must do so on the face of the bill in clear and unequivocal terms, and in such a manner that any person taking the bill, if he acted reasonably, could not fail to understand that it was accepted subject to an expressed qualification."

I found that the acceptance at Ex. A5 to Mr. Chan Sek Keong's affidavit was a clear acceptance which was unqualified in clear and unequivocal terms, either on the face of it or even after reading it in conjunction with Ex. G above. It will be noted that Ex. G refers to a previous letter dated 5th November, 1971 written by the defendants which is at Ex. D to the managing director's affidavit. I was unable, after reading all the correspondence and in particular the exhibits to which I have referred including the letter of 5th November, 1971, to reach the conclusion that the defendants had succeeded in conveying that their acceptance was qualified.

In their letter of 5th November, 1971 the defendants said,

"With regard to further 150 sets to which you had completely refused acceptance of 90 days D/A in our letter dated 22nd October, 1971 and also during your telephonic conversation with us, we had not confirmed our customer's order and as per your reply, it appears that, without our re-confirmation, you have shipped these goods at DM.190 on 90 days D/A. We cannot confirm this commitment now until our customer from Indonesia returns to Singapore by the end of this month and therefore please wait for some more days to enable us finalise this business and let you know."

It appeared to me from all the correspondence that a contract had been concluded as a result of which the plaintiffs shipped the goods in question on November 4th. In their letter of 25th October at Ex. A1 to Mr. Chan's affidavit the defendants said,

"With regard to the additional offer of 150 sets 6104 referred to in your above cable, we had requested you that we are willing to take this quantity at DM.190 per set C&F on 90 days D/A basis as the other exporters from Bremen are supplying us these as DM.188 against L/C basis.

Should this be acceptable to you, you may ship either the total quantity or 50 sets only and confirm to us by a short cable immediately."

At Ex. C to the defendants' affidavit, the plaintiffs informed the defendants as follows on 1st November, 1971 in reply to the defendants' letter of 25th October, 1971 at Ex. A1 above,

"In the meantime we could obtain further 100 pcs. of N.6104, so that we could comply with your request to ship further 150 pcs. of N.6104 against 90 days D/A terms. Shipment of these 150 pcs. will be made as well with M/s. 'Karl Marx' on Nov. 4th. Enclosed please find our order confirmation and Prov. Inv. With this lot all our stocks of N.6104 have been cleared."

I found that the defendants had given clear authority to the plaintiffs to ship either 150 pieces or 50 pieces against 90 days D/A terms and that by shipping 150 pieces on November 4th 1971 the plaintiffs concluded the contract between the parties leaving no other term or condition to be agreed whether as to price or the number of pieces to be shipped.

The defendants contended that they did not order these goods nor that they agreed the price of DM.190 on 90 days D/A basis for the same. They complained that the said goods were shipped without their confirmation.

I carefully considered the last paragraph of Ex. A5 to see whether their complaint was well-founded. In that paragraph the defendants said, "should this be acceptable to you, you may ship either the total quantity or 50 sets only and confirm to us by a short cable immediately." They did not say, "Inform us by cable whether you accept these terms before you ship either 150 or 50 sets in order that we can confirm our acceptance of your acceptance of our terms as to the price and the exact number of sets you will be shipping." It is true that the plaintiffs did not send a short cable immediately saying, "Your terms accepted, shipping 150 sets Nov. 4th." They shipped the goods on November, 4th. By doing so, they clearly signified their acceptance of the terms imposed by the defendants and appropriated the 150 sets to the contract as empowered by the defendants who left it to their descretion to ship *either* the total quantity of 150 sets or 50 sets only. For all these reasons, it seemed to me that the plaintiffs had an unassailable case against the defendants on the bill of exchange in question which the defendants clearly accepted unequivocably albeit an attempt was made by them to vary the terms of their contract unilaterally by means of their letter of 17th December 1971 at Ex. G.

I accordingly allowed the appeal in favour of the plaintiffs.

Appeal allowed.

Solicitors: *Shook Lin & Bok; G. Murugaiyan.*

EVELYN TAN v. TAN LIM TAI

[O.C.J. (Winslow J.) August 17, 1973]

[Singapore — Originating Summons No. 75 of 1973]

Family Law — Husband and wife — Property purchased in the name of husband — Substantial financial contributions by wife — Property sold at a profit — Claim by wife for share in profits — Women's Charter, (Cap. 47), s. 55.

The plaintiff who had been living separately from the defendant, her husband, since 1970 applied for a share in the proceeds of sale of the matrimonial home. The property was purchased in the name of the husband in 1960 for $19,500 and sold for $46,000 in 1971. The plaintiff claimed that she had made substantial financial contributions towards the purchase of the house.

Held: (1) on the facts of the case the plaintiff had made substantial financial contributions towards the acquisition of the joint matrimonial house in circumstances which justified the conclusion that it was the common intention of both spouses that they should share the house at least in equal shares even though the conveyance was made in the name of the husband alone;

(2) on the evidence the court could draw an inference of a trust and therefore the plaintiff was entitled to claim a share in the proceeds of sale of the matrimonial home.

Cases referred to:-

(1) *Wachtel* v. *Wachtel* [1973] 3 W.L.R. 375.

(2) *Pettitt* v. *Pettitt* [1970] A.C. 777.

(3) *Gissing* v. *Gissing* [1970] 3 W.L.R. 265.

(4) *Cowcher* v. *Cowcher* [1972] 1 W.L.R. 425.

ORIGINATING SUMMONS.

Joshua Lim (Assistant Director of Legal Aid) for the plaintiff.

Ho Ung Tuck for the defendant.

Winslow J.: By this originating summons, the plaintiff/wife who has been living separately from the defendant/husband since 1970, seeks a determination by the court under section 55 of the Women's Charter (Cap. 47) that she is entitled to a half-share in the proceeds of sale of the matrimonial home at No. 1 Tham Soong Avenue, Singapore.

This property was purchased in the name of the husband on 1st April 1960 for $19,500 and sold for $46,000 in 1971. A down-payment of $4,600 was originally made leaving a balance of $14,900 to be repaid by monthly instalments of $127.90 over 15 years on a loan from the Malaya Borneo Building Society which held a mortgage on the property until it was sold in 1971 after redemption. According to Ex. "TLT 1" filed with the defendant's affidavit of 11th April 1973, outgoings by way of redemption monies, solicitors' costs and commission amounting to $5,281.41 were paid out of the proceeds of sale leaving approximately $40,800 as the proceeds available for division between the parties should I decide that the wife is entitled to a share therein. As I said at the conclusion of the hearing on 21st June 1973 I had no doubt then that she was so entitled, the only question on which I reserved judgment being the quantum of that share.

The husband gave his mother $9,000 out of this balance on the basis that that was the amount he claims he received from her towards the purchase of the house and for improvement (including furniture and chinaware which she has recovered). Be that as it